



07 AUG 19 PM 2:31

**CITY OF EL PASO, TEXAS  
BUILDING & PLANNING SERVICES**

**MEMORANDUM**

**TO:** The Honorable Mayor & City Council  
Jim Martinez, Chief Administrative Officer  
Laura Uribarri, Executive Assistant to the Mayor  
Adrian Ocegueda, Executive Assistant to the Mayor

**COPY TO:** Lisa Elizondo, City Attorney  
Terri Cullen-Garney, Deputy City Attorney  
Kevin Elkins, Assistant City Attorney  
Irene Ramirez, P.E., Interim City Engineer  
Ted Marquez, P.E., Traffic Engineering Division Manager

**FROM:** Patricia D. Adauto, Deputy CAO for Building & Planning Services *Adauto*

**SUBJECT:** City Council Agenda Items for August 24, 2004 Agenda

**DATE:** August 19, 2004

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The following item has been scheduled for City Council action as noted above.

That the Mayor be authorized to sign a CONDUIT UNDER TRACK AGREEMENT, attached as Exhibit "A", between the Texas Department of Transportation ("TXDOT"), the Union Pacific Railroad Company ("Railroad") and the City of El Paso ("City"), for the use of property under the track of the Railroad by the City and TXDOT to install conduit and conductor cable to provide for traffic light synchronization.

This three-party agreement allows for the use of railroad property for the installation of conduit and conductor cable at Copia under the railroad overpass for the traffic light synchronization project. There are no costs associated with this agreement. Building & Planning Services recommends approval of this item.

Should you have any questions regarding this item you may reach me or Teresa Quezada at 541-4853.

## RESOLUTION

**WHEREAS**, an existing underpass structure on Copia Street crosses Union Pacific Railroad Company track at DOT No. 741 166A (Railroad Milepost 1299.33) in El Paso, El Paso County, Texas, and

**WHEREAS**, the State of Texas, acting by and through the Texas Department of Transportation, and the City of El Paso propose to cut a trench across the roadway under the track of the Railroad to install conduit and conductor cable to provide for traffic light synchronization at DOT No. 741 166A (Railroad Milepost 1299.33) in El Paso, El Paso County, Texas,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the Mayor be authorized to sign a CONDUIT UNDER TRACK AGREEMENT between the Texas Department of Transportation, the Union Pacific Railroad Company and the City of El Paso, to allow for the installation of conduit with conductor cable under the existing underpass structure on Copia Street under the Union Pacific Railroad Company's track.

**ADOPTED this 24<sup>th</sup> day of August, 2004.**


THE CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy  
Mayor

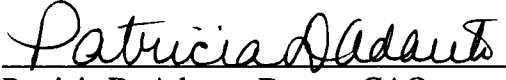
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Theresa Cullen-Garney  
Deputy City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patricia D. Adauto, Deputy CAO  
for Building and Planning Services

El Paso County  
CSJ 0924-06-221  
Project CM 2004(175)  
Copia Street  
In El Paso  
DOT No. 741 166A

UP Folder No. 2247-03

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

**TEXAS DEPARTMENT OF TRANSPORTATION**

**CONDUIT UNDER TRACK AGREEMENT**

THIS AGREEMENT, made and entered into on the date hereinafter shown as being fully executed, by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the Union Pacific Railroad Company, a Delaware corporation, hereinafter called the "Railroad", acting by and through their official contracting officers, and the City of El Paso, hereinafter called the "City", acting by and through its duly authorized City official.

W I T N E S S E T H

WHEREAS, an existing underpass structure on Copia Street crosses the Railroad's track at DOT No. 741 166A (Railroad Milepost 1299.33) in El Paso, El Paso County, Texas; and

WHEREAS, the State and the City propose to cut a trench across the roadway under the track of the Railroad to install conduit and conductor cable to provide for traffic light synchronization at DOT No. 741 166A (Railroad Milepost 1299.33) in El Paso, El Paso County, Texas, as shown in Exhibit "A" attached hereto and made a part hereof, and

WHEREAS, all work to be performed and all materials to be provided will be at the State's expense.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto be by them respectively kept and performed, as hereinafter set forth, it is agreed as follows:

1. PERMISSION. The Railroad hereby grants permission to the State and/or its Contractor and the City to install conduit with conductor cable under the roadway under the Railroad track by the trenching method.

## 2. RAILROAD FORCE ACCOUNT.

a. In order to provide for the safety of rail traffic, the Railroad may provide, at State's expense, flaggers during the period of performance of work in or incident to the proposed installation of conduit and fiber optic cable. The Railroad shall prepare a written cost estimate, subject to approval by the State, attached hereto and to be identified as "Attachment '1'". The Railroad should include the cost associated with flagging and engineering in the estimate. Only work shown in the approved estimate will be reimbursed.

b. The Railroad shall perform the flagging to be done by the Railroad as required by the project only after receipt of a written Work Order from the State to proceed with same. Payment will not be made for flagging done by the Railroad that is performed at the project site prior to the issuance of a "Work Order" by the State. The providing of this service shall not relieve the State and/or its Contractor of any responsibility or liability.

c. The State shall give the Railroad's Superintendent of Transportation at least ten (10) days written notice prior to commencement of any work hereunder.

## 3. CONSTRUCTION AND MAINTENANCE.

a. The State, the City, and the Railroad agree to perform the work as outlined in Exhibit "A". The work will generally consist of installing conduit with conductor cable under the roadway under the Railroad track by the trenching method, which will be performed by the State and/or its Contractor.

b. It is agreed that after completion of this project the City will maintain the conduit and conductor cable at its sole expense.

c. The Railroad, under terms of this agreement, gives the State and/or its Contractor and/or the City permission to enter the Railroad right of way to perform routine maintenance and/or emergency work as required. This permission is granted solely for the work performed under this agreement.

## 4. INSURANCE.

The contract or contracts to be let by the State for the construction of the work to be undertaken by it hereunder shall provide:

a. Comprehensive General Liability Insurance Policy. The State's Contractor shall furnish evidence to the State that, with respect to the operations the Contractor performs, the Contractor carries a Standard Comprehensive General Liability Insurance Policy providing limits of not less than two million dollars (\$2,000,000) for bodily injury and property damage per occurrence, and not less than two million dollars (\$2,000,000) aggregate for all occurrences.

If any part of the work is sublet, similar insurance shall be provided by or on behalf of the subcontractors to cover their operations.

b. Contractors' Protective Liability Insurance. The State's Contractor shall furnish evidence to the State that, with respect to the operations performed for the Contractor by subcontractors, the Contractor carries on his own behalf a Contractors' Protective Liability Insurance Policy providing for a limit of not less than two million dollars (\$2,000,000) for bodily injury and property damage per occurrence, and not less than two million dollars (\$2,000,000) aggregate for all occurrences.

c. Railroad Protective Liability Insurance (which includes Bodily Injury, Property Damage, and Physical Damage Insurance). The State's Contractor shall furnish an original policy to the State for and on behalf of the Railroad which, with respect to the operations the Contractor or any subcontractors perform, provides the Standard Railroad Protective Liability Insurance Policy with a limit of not less than two million dollars (\$2,000,000) for bodily injury, property damage and physical damage to property, and not less than six million dollars (\$6,000,000) aggregate for all occurrences.

d. General. The insurance specified in paragraphs a. and b. shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by formal acceptance by the State.

The insurance specified in paragraph c. above shall be carried until all work performed on the Railroad right of way has been completed and the temporary grade crossing, if any, is no longer used by the contractor.

##### 5. PAYMENT.

a. No payment will be due the Railroad unless a Work Order for work to begin is issued by the State. This Work Order will normally be issued shortly after the contract letting.

b. Reimbursement to the Railroad will be made for work performed and materials furnished, including but not limited to, insurance premiums and coverage at the rate and amount set forth in the approved cost estimate attached hereto, in accordance with the provisions of the Federal-Aid Policy Guide, Subchapter B, Part 140, Subpart I, issued by the Federal Highway Administration on December 9, 1991, and amendments thereto except as modified by the provisions herein. Work performed and materials furnished by the Railroad will be reimbursed by the State based on actual costs incurred by the Railroad as they relate to the development of the project and approved in the cost estimate, identified as "Attachment '1'".

c. The cost of preliminary engineering (which is ineligible for reimbursement with Federal funds if incurred prior to date of project letting and authorization of Federal funds) will be reimbursed with State funds if incurred after the State's request for preparation of estimates.

d. The Railroad may submit monthly bills of at least \$2,500.00, prepared in satisfactory form, for items provided in the approved cost estimate. Payment will be made within thirty (30) days for as much as 95% of the costs detailed on the bills.

e. The Railroad will submit a complete and final bill, including all eligible costs, when the project is completed, and the State will pay to the Railroad as much as 95% of the costs detailed on the bill. The State shall make payment within thirty (30) days of receipt of the bill. After audit of the Railroad's documentation for the final bill, the State will make payment of the eligible balance due the Railroad.

6. TERMINATION. The State and/or the City reserves the right to cancel this agreement for any reason and at any time prior to the issuance of a Work Order by the State to the Railroad to proceed with any part of the work outlined herein. The State and/or the City will not be responsible for any expense incident to any cost incurred in the event of the cancellation of this contract, unless a "Work Order" was issued by the State and the Railroad incurred expenses pursuant to that "Work Order".

7. RECORDS AND AUDITS.

a. The State, the City, and the Railroad shall maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at their offices during the contract period and for three (3) years from the date of final payment. The records shall be made available to representatives from the State or U. S. Department of Transportation, including the Office of Inspector General, for the purpose of making audits, inspections, transcriptions, or excerpts.

b. The State auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

8. EXISTING AGREEMENTS. It is agreed that all existing agreements between the Railroad and the State and/or the City concerning licenses, permits, leases or easements at this location shall remain in full force and effect.

9. RESPONSIBLE FOR ITS OWN ACTIONS. The parties hereto acknowledge that no party is an agent, servant, or employee of any of the other parties, and each party agrees it is responsible for its own individual acts and deeds as well as the acts and deeds of its contractors, agents, representatives, and employees during performance of contract work.

10. PROTECTION OF FIBER OPTIC CABLE SYSTEMS. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The State and/or its Contractor shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Standard Time, Monday through Friday, except holidays) at (800) 336-9193 (also a 24-hour, seven-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the State. If it is, the State and/or its Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

11. LIMITED ACCESS. The State and/or the City hereby agrees that during the performance of the proposed improvements it will keep its employees, material, and machinery within the defined area of the premises unless otherwise specified in Exhibit "A". There shall be no crossings of the Railroad's track except at existing, open, and public crossings.

12. RAILROAD RETAINS TITLE. Upon execution by all parties, this agreement will be in effect and continue thereafter for so long as the Railroad premises shall be used for the purposes set forth herein; provided, however, if the State shall abandon the use of the Railroad premises, or any part thereof, for such purposes, this license and permission and the rights and privileges granted hereby as to the portion or portions so abandoned shall expire and terminate at the time each such portion shall be so abandoned; whereupon the Railroad shall have the same complete title to the Railroad premises so abandoned as though these presents had never been executed and the right to enter thereon and exclude therefrom the State, its successors, and assigns.

13. TRANSFER. The parties hereto shall not assign the Agreement, in whole or in part, or any rights herein granted, without the written consent of the other party, and it is agreed that any transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the non-transferring party, shall terminate this Agreement.

14. AGREEMENT NOT A WAIVER. This permission is granted solely for the purposes of the State and/or the City, at its sole cost and expense, for the proposed installation of conduit with conductor cable as shown in Exhibit "A", and is expressly subject and subordinate to the present and future rights of the Railroad, its successors, assignees, lessees, grantees and licensees, to maintain, use, operate, and renew on, beneath, or above the surface of the Railroad premises any telephone, telegraph, power, communication, or signal lines, poles and/or appurtenances, fiber optic communications, track, roadways, pipelines, structures, improvements, or facilities of similar or different character, as now located, and to construct, install, establish, and thereafter maintain, use, operate, and to renew on, beneath, or above the surface of the Railroad premises, any or all said things, provided the same do not materially interfere with the State's use of the Railroad premises as hereinabove provided.

15. NOTIFICATION. The State and/or the City agrees to notify the Railroad in writing when all work on the Railroad's right of way is complete.

16. RELOCATION OR REMOVAL OF CONDUCTOR CABLE SYSTEM.

a. The permission herein granted is subject to the reasonable needs and requirements of the Railroad in the operation of its railroad and in the improvements and use of its property for railroad purposes. The State and/or the City shall, upon the Railroad giving the District Engineer and/or the City reasonable advance written notice, relocate all or any portion of the conductor cable system to another portion of the Railroad's property. The relocation shall be at the sole expense of the State and/or the City whenever, in the furtherance of the Railroad's reasonable railroad needs and requirements, the Railroad reasonably finds that such relocation is necessary.

b. All the terms, conditions and stipulations herein expressed with reference to the conductor cable system on property of the Railroad in the locations hereinbefore described as shown in Exhibit "A" shall, so far as the conductor cable system remains on the property, apply to the conductor cable system as modified, changed, or relocated within the contemplation of this section.

17. CONDITIONS. All provisions concerning the State, which are stipulated herein, related to highway facilities not located on the state highway system shall automatically cease and terminate upon official completion of the project. The City shall assume the rights of the State after the State has completed the project and released retainage (if retainage required) and paid the Railroad for all eligible costs incurred hereunder, for those facilities not located on the state highway system.



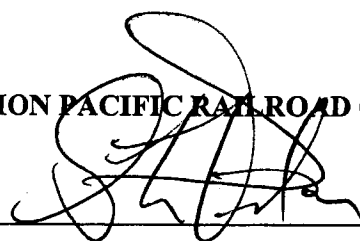
IN WITNESS WHEREOF, the State, the Railroad, and the City have executed triplicate counterparts of this agreement on the dates indicated below.

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By \_\_\_\_\_ Date \_\_\_\_\_  
Carlos A. Lopez, P.E., Director, Traffic Operations Division

**UNION PACIFIC RAILROAD COMPANY**

By  Date 5/10/04  
Name and Title B. C. Pinkel Director-Contracts

**THE CITY OF EL PASO** SIGNATURES CONTINUED ON PAGE 7A

By \_\_\_\_\_ Date \_\_\_\_\_  
Name and Title \_\_\_\_\_

**Notices:**

For the purposes of this agreement, all notices, correspondence, billings, and other documentation shall be mailed to the following addresses:

**For the State of Texas**

Railroad Section Director  
Texas Department of Transportation  
Traffic Operations Division  
125 E. 11th Street  
Austin, TX 78701-2483

**For the Union Pacific Railroad Co.**

Regional Manager  
Industry & Public Projects  
Union Pacific Railroad Company  
24125 Aldine-Westfield Road  
Spring, TX 77373

**For the City of El Paso**

City Engineer  
~~Director of Public Works~~  
City of El Paso  
#2 Civic Center Plaza  
El Paso, TX 79901

**CITY OF EL PASO**

**ATTEST:**

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Joe Wardy  
Mayor

---

Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

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Theresa Cullen-Garney  
Deputy City Attorney

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*Patricia D. Adauto*  
Patricia D. Adauto, Deputy CAO  
for Building and Planning Services

APPLICATION

1). Name of Licensee: TEXAS DEPARTMENT OF TRANSPORTATION  
(Name to be shown on Document)

a) If a corporation \_\_\_\_\_  
(Exact Name of Corporation)

a corporation of the State of \_\_\_\_\_  
(State of Incorporation)

NOTE: The corporate name of a company should be exactly as stated in its Articles of Incorporation. Type of Corporation, if other than a normal business corporation, MUST be shown:

\_\_\_\_\_  
(Municipal, quasi-municipal, body politic, etc.)

b) If an Individual \_\_\_\_\_  
(Name of Individual)

of \_\_\_\_\_  
(City & State)

c) If an individual or corporation doing business under a trade name:

\_\_\_\_\_  
(Doing Business As or Trade Name)

d) If a partnership \_\_\_\_\_  
(Name of Partnership)

a partnership consisting of:

and \_\_\_\_\_

all of \_\_\_\_\_  
(City & State)

2). Address of Licensee:

13301 GATEWAY BOULEVARD WEST, EL PASO, TEXAS 79928-5410

3). Name and mailing address of individual to whom instrument is to be sent for execution if different than shown in Item 2:

\_\_\_\_\_  
(Name & Address)

4). Billing address if different than shown in Item 2:

\_\_\_\_\_  
(Address)

5). Name and phone number of individual to contact in event of questions:

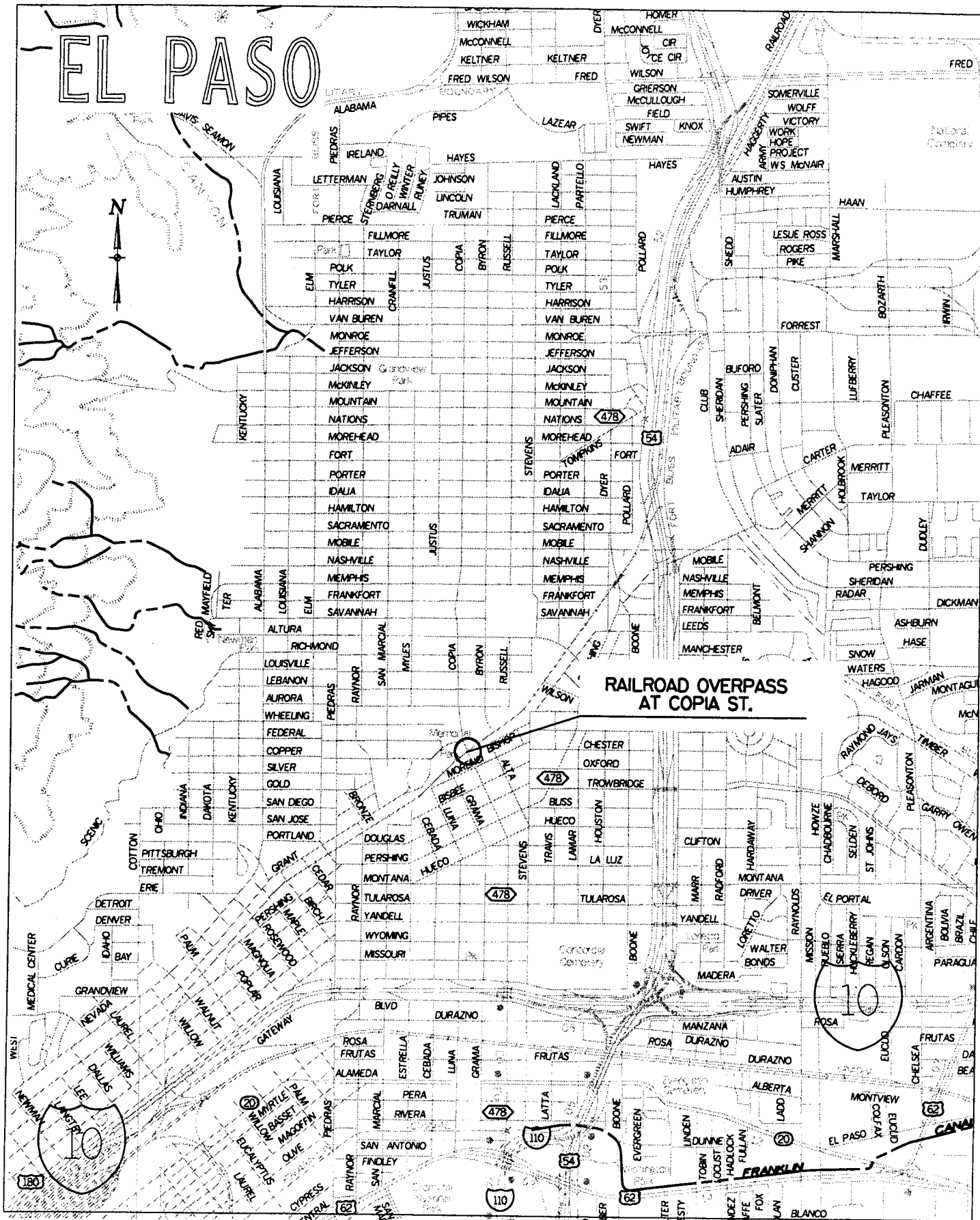
\_\_\_\_\_  
FAX # \_\_\_\_\_

- 6). a) Do you plan to utilize the right-of-way for a public use (for a utility crossing)? ☒ Yes ☐ No  
b) Do you have authority to utilize the right-of-way for a public use by condemnation? ☐ Yes ☐ No  
c) Will you initiate condemnation proceedings to acquire the subject property in the event negotiations are unsuccessful? ☐ Yes ☐ No

- 7). When do you expect construction to begin on the Railroad Company's property? October, 2004
- 8). When do you need to receive this agreement from the Railroad Company? MARCH, 2004  
(Please allow 30-45 days for crossings and 90-120 days for encroachments)
- 9). Permanent or Temporary Installation - PERMANENT  
If Temporary, estimated term - \_\_\_\_\_
- 10). Location of installation - City of El Paso, El Paso County, Texas  
(City, County & State)  
\_\_\_\_\_ ft. (N), (S), (E), or (W) of the (N), (S), (E), (W) or (Center) line of Section \_\_\_\_\_  
Township \_\_\_\_\_ (N) or (S), Range \_\_\_\_\_ (E) or (W).
- 11). New installation, relocation or modification of existing installation which is located on the Railroad Company's property or across tracks?  
New installation
- 12). Do you have an existing agreement at this location with the Railroad Company which is to be affected by this request?  
( ) No ( ) Yes, Railroad Company Contract Number: \_\_\_\_\_
- 13). Is installation a crossing ☒ or encroachment \_\_\_\_\_ or both? \_\_\_\_\_
- 14). Is installation located within a dedicated public street? No \_\_\_\_\_.  
Yes ☒, enclosed are records which identify and prove the dedication of such public way.
- 15). Additional information pertinent to this installation:  
TRACKS AND COPIA STREET ARE GRADE SEPARATED. REQUESTING
- 16). If an encroachment, who will be served?  
\_\_\_\_\_  
(Railroad, Railroad Tenant, General Public, etc.)
- 17). Did the Railroad Company's magazine advertisement affect your decision to utilize the right-of-way for a utility corridor?  
( ) Yes ( ☒ ) No. If not, did another medium impress your decision? ( ) Yes ( ☒ ) No.  
If applicable, please advise other medium: \_\_\_\_\_

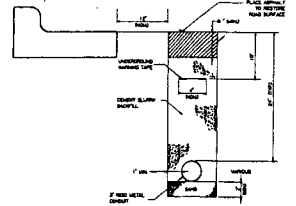
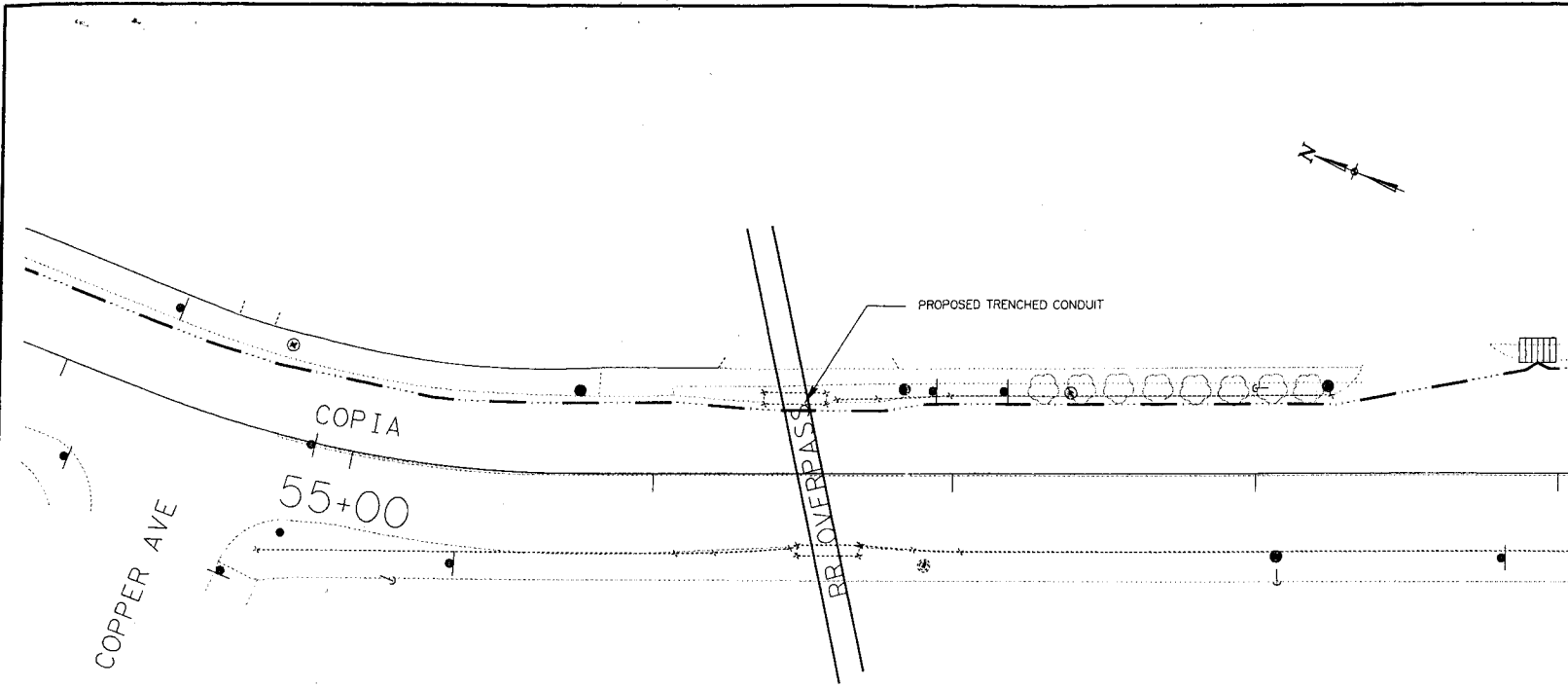
#### CONTRACTOR AND INSTALLATION INFORMATION

- 18). Will construction be by a Contractor? ( ) No ( ☒ ) Yes  
If yes, Contractor will be: TO BE DETERMINED  
Address: \_\_\_\_\_  
Corporate Status: \_\_\_\_\_  
Name and Phone Number of individual to contact in the event of questions: \_\_\_\_\_
- 19). Describe in detail the method and manner of installation on the Railroad Company's property:  
TRENCH ACROSS RAILROAD PROPERTY. PLACE 3" <sup>PVC</sup> ~~RA~~ CONDUIT 2' BENEATH PAVEMENT SURFACE.

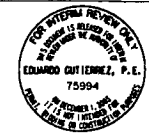
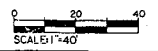


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TYPICAL TRENCH PLACEMENT IN PAVEMENT



**L&N** Lockwood, Andrews & Newnam, Inc.  
A L&N COMPANY

**Texas Department of Transportation**  
© 2004

# RAILROAD EXHIBIT COPIA ST AT CUPPER AVE

SHEET 1 OF 1			
FED. RD. DIST. NO.	FEDERAL AID PROJECT NO.	SHEET NO.	
6	STP 2004 (XXX)HES		
STATE	COUNTY	SCALE	
TEXAS	EL PASO	1" = 40'	
CONTRACT	SECTION	JOB	HIGHWAY NO.

**ATTACHMENT “1”**

**Estimate From Railroad For  
Railroad Flagging**

**No Railroad Flagging Necessary      \$0.00**